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LINES

Insurance News & Information

THE TENNESSEE DEPARTMENT OF COMMERCE & INSURANCE

Summer 2008

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Contact Us

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— Need Your Input —

Please let us know your thoughts about this newsletter and any input or thoughts you may have for future editions.

libby.cain@state.tn.us

Greetings from the Commissioner

Greetings from the Commissioner



We are very pleased that, as a result of the hard work and cooperation from industry stakeholders in developing consensus legislation over many months and after many meetings, all of our bills passed the General Assembly during this legislative session. One bill rewrites the unfair trade practices and unfair settlement practices provisions of State law. The new bill, among other things: 1) expands upon unfair discrimination practices to prohibit insurers from refusing to issue policies on the basis of a person's income or educational background; 2) references the NAIC market conduct handbook as the standard for best claims practices; and 3) increases fines and penalties for unfair and deceptive practices. The Department now has the necessary tools to deal with unfair and deceptive practices in a meaningful, punitive way.

A second bill allows full participation in the Long-Term Care Partnership. The bill will require that insurance producers that sell long-term care insurance receive continuing education specifically covering those long-term care products. The Department will be issuing a Bulletin shortly on the partnership, approval of forms and continuing education requirements.

As part of a national effort to bring reciprocity and uniformity to agent licensing, our third bill amending the producer licensing statute includes changes to the law regarding renewal dates (last day of the birthday month), fingerprinting required for all new applicants and continuing education requirements on ethics and long term care products. The bill also includes a waiver provision regarding limited lines non-residential licenses that has led the NAIC to recommend that Tennessee be considered a reciprocal state in the area of producer licensing, bringing the number of reciprocal states to 48.

Another bill tightened up some significant gaps in the charitable annuity statute and our final bill made changes to our long term care insurance statute that allows us to become part of the Long Term Care Partnership.

The Department is also busy working on several sets of rules that are in various stages of adoption that concern required disclosures in the sale of annuities, the sale of variable life insurance and variable annuities, electronic filing and payment of premium taxes, charitable gift annuity rules that will implement our new legislation, self-insured workers compensation single employers, medical malpractice reporting that implements an amendment to the workers compensation statute, and, finally, rules that will implement the long term care insurance bill.

Please continue to check our website as we try to keep you informed of the work that we are doing. We welcome your input and suggestions as to how we can improve our service.

Best regards,
Leslie A. Newman
TDCI Commissioner

CONSUMER CORNER:

ARE YOU PROPERLY INSURED FOR YOUR SUMMER FUN?

The temperature is rising and the sun is shining, but before you put the boat on the lake or get the ATVs out of storage, the National Association of Insurance Commissioners (NAIC) urges you to review your insurance to make sure you are properly protected. Use these tips to review your coverage to make sure you and your family are insured for the increased risks that come with outdoor activities.

Boats

The personal property coverage of your homeowners policy might cover a small boat for \$1,500 or less in physical damage. However, coverage for your liability risk is limited. Insurers generally provide liability insurance on small sailboats (26 feet or less) and powerboats with small motors (50 hp for inboard and inboard/outboard and 25 HP for outboard motors). However, a boat of any significant size will be excluded from your homeowners policy for both property and liability coverage. If you own a larger boat, ask your insurance agent or company about a separate policy that covers physical damage to the boat and any liability that might result from its use.

Personal watercrafts, such as Jet Skis, will also likely require a separate boat insurance policy. Again, you might be able to purchase this policy from your homeowners insurer or you might wish to use an insurer that specializes in boat insurance. Talk with your insurance agent or company about your options.

Some other questions to ask your agent before putting your boat in the water:

- Does my policy have adequate liability limits?
- Are there special discounts for taking safety courses?
- Who does the policy cover to operate the boat or personal watercraft?



- Is the towing of skiers or tubes covered by my policy?

Motorcycles and Scooters

Motorcycles are not covered by your standard auto insurance policy. You must have a separate policy that covers liability, no-fault personal injury protection (if required) and depending on the value of the motorcycle, comprehensive and collision coverage. If your motorcycle is financed, your lender will likely require you carry physical damage coverage.

The premium for your policy will partially depend on the motorcycle's engine size, its age and how often you ride. When you're getting a quote, be sure to ask your insurance agent or company if they offer discounts to members of associations or for taking safety courses.

Insurance companies have separate requirements for helmets. Be sure you understand your state law and that you have read your policy to see what it requires when it comes to wearing a helmet. If you have specific questions, contact your state insurance department. For a link to your insurance department's Web Site, go to

www.naic.org/state_web_map.htm.

If you carry seasonal coverage on your motorcycle, which allows you to eliminate liability and perhaps collision coverage in the winter months if you do not ride, check to make sure your policy is up to date and that you have a current insurance card before riding this summer.

Scooters for yourself or your teenager also must have insurance. Talk with your insurance agent or company about who will be operating the scooter. Some insurance companies might offer a discount for safety courses.

ATVs

All-terrain vehicles (ATVs) are also not covered by standard automobile insurance policies; however, your homeowners policy might partially cover your liability on an ATV. Ask your insurance agent or company if this coverage is enough to protect you

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Consumer Corner Contact Information:

Director for Consumer Insurance
Services: Vickie Trice
To file a complaint, please call
1-800-342-4029 or email
cis.complaints@state.tn.us

The Consumer Insurance Services
Section exists to serve all consumers
protected by an insurance product in
Tennessee. We're here to help you
protect your rights and when
necessary, mediate complaints against
insurers. We can offer valuable
resources to help you: evaluate and
choose the right insurance product,
check on agents, companies and
products, and to troubleshoot
problems. ■

DISCIPLINARY ACTIONS

TDCI Disciplinary Actions Against Insurance Agents/Producers

Gregory Alford (904606)
Chattanooga, TN – Revocation for being convicted of a felony.

Michael E. Beckman (38196)
Lebanon, TN – Suspension from writing replacement policies for two years, five years probation, assessed a ten thousand dollar (\$10,000) civil penalty and other restrictions for having known or should have known that persons who were not licensed were selling for his agency and misrepresenting their identity to consumers.

Matthew Robinson Brock (712741)
Lookout Mountain, Georgia – Revocation for being convicted of a felony.

Delbert Foster Blount, III (755495)
Chattanooga, TN – Revocation and assessed a civil penalty in the amount of one hundred and fifty thousand dollars (\$150,000) for engaging in securities fraud and other securities violations.

David Allen Nichols (320056)
Knoxville, TN – Revocation for forging client signatures, misrepresenting the terms of annuity contracts, and misappropriating premiums.

Douglass Wayne Smith (616360)
Memphis, TN – Revocation for being convicted of two felonies in violation of Tenn. Code Ann. § 56-6-112.

TDCI Disciplinary Actions Against Insurance Companies

American Automobile Insurance Company
Novato, California

American Automobile Insurance Company was assessed a civil penalty in the amount

of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Associated Indemnity Corporation
Chicago, Illinois

Associated Indemnity Corporation was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Cherokee Insurance Company
Sterling Heights, Michigan

Cherokee Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Electric Insurance Company
Beverly, Massachusetts

Electric Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on April 10, 2008.

Fireman's Fund Insurance Company
Novato, California

Fireman's Fund Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Memphis Managed Care Corporation
Memphis, Tennessee

Unison Insurance Company was assessed a civil penalty in the amount of thirty thousand dollars (\$30,000) for failing to meet the prompt pay requirements for TennCare health maintenance organizations. Consent Order entered on February 25, 2008.

National Surety Corporation
Chicago, Illinois

National Surety Corporation was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Pegasus Insurance Company
Oklahoma City, Oklahoma

Pegasus Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

Star Insurance Company
Southfield, Michigan

Star Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on April 10, 2008.

The American Insurance Company
Novato, California

The American Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on May 7, 2008.

The Security Title Guarantee Corporation of Baltimore
Baltimore, Maryland

The Security Title Guarantee Corporation of Baltimore was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to file its financial, statistical and loss data.

Unison Health Plan of Tennessee Incorporated
Cordova, Tennessee

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DISCIPLINARY ACTIONS Continued

Unison Insurance Company was assessed a civil penalty in the amount of thirty thousand dollars (\$30,000) for failing to meet the prompt pay requirements for TennCare health maintenance organizations. Consent Order entered on March 28, 2008.

United General Title Insurance Department

Montecito, California

United General Title Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to file its financial, statistical and loss data.

Williamsburg National Insurance Company

Southfield, Michigan

Williamsburg National Insurance Company was assessed a civil penalty in the amount of five hundred dollars (\$500) for failing to timely file its loss cost multiplier. Consent Order entered on April 10, 2008.

Vacation Protection Services, Inc. f/k/a Traveler Protection Service, Inc.

Dekalb, Illinois

Insurance company sold, solicited and negotiated travel protection insurance to Tennessee residents. Entered into Agreed Order to cease and desist from selling, soliciting and negotiating travel protection insurance to Tennessee residents.

Status of Proposed Rules

Rules regarding Insurance Producer Licensing (0780-1-56)

These rules prescribe the pre-licensing, examination, continuing education, and renewal requirements for insurance/HMO producers licensed in this State. The rules became effective

on January 1, 2008. Beginning July 1, 2008, these rules will require insurance producers taking an examination to submit fingerprints.

Rules regarding Rating Appeals Before the Commissioner (0780-1-82)

These rules establish procedures for insureds in this state to appeal to the commissioner an insurer's or rate service organization's application of the rating system to the insured's workers' compensation insurance coverage. The rules became effective on February 24, 2008.

Rules regarding Self-Insured Workers' Compensation Pools (Amendments) (0780-1-54)

These amendments intend to clarify the policies and procedures for the Department when regulating the pools and set forth the policies and procedures that must be followed by the pools. A rulemaking hearing was held on April 24, 2008. The Department is preparing responses to comments.

Rules regarding Suitability in Annuity Transactions (0780-1-86)

These rules set forth the standards and procedures for recommendations to consumers that result in a transaction involving annuity products. The procedures and standards intend to ensure that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These rules have been filed with the Secretary of State and are effective on July 6, 2008.

Rules regarding Vehicle Protection Product Acts (0780-1-80)

These rules set forth the guidelines for administering the Tennessee Vehicle Protection Product Act as provided for in Tennessee Code Annotated § 56-55-113. These rules have been filed with the Secretary of State and are effective on July 6, 2008. ■

Consumer Corner...cont.

and your family. You might want to consider a separate ATV policy to make sure you are properly insured.

Other questions to ask your insurance agent or company:

- Are there age restrictions on who may operate the ATV?
- Does my policy cover friends or family who are operating the ATV?
- Is there a discount for taking an operator safety course or for riding with a helmet?

Backyard Fun – Pools and Trampolines

Pools and trampolines, while fun for the family, are also dangerous and will increase your insurance risk. It is important to check with your insurance agent or company to make sure you are properly insured for this risk. You might want to consider purchasing an umbrella policy to provide liability coverage above what your homeowners policy offers. Be sure to ask if your homeowners policy specifies any safety measures you are required to install, such as a certain height fence or locked gate.

Some companies might not insure your property if you have a trampoline, or they might have policy exclusions for any liability related to trampoline injuries. Be sure to understand exactly what damages and injuries your homeowners policy covers before you allow anyone on the trampoline.

An insurance company can deny coverage or cancel your policy if you do not follow the policy safety guidelines or do not inform the company when you install a pool or purchase a trampoline. Check with your insurance agent or company for rates and safety guidelines before making your purchase.

More Information

Nearly all summertime, outdoor activities come with increased risks. A call to your insurance agent is always a good first step in making sure you are protecting yourself and your family.

If you have additional questions about your insurance needs for summer risks, contact us at www.tn.gov/commerce. ■

LEGISLATIVE SUMMARY

Public Chapter

Effective Date

10650

5/28/2008

Preneed Funeral Contracts/Insurance (SB2705/HB2763) – This bill creates an exemption to the present law prohibition against irrevocable assignments of prearrangement insurance policy benefits to a funeral establishment. If an insurance company issuing a policy does not offer a funeral trust, or only offers a funeral trust for an additional charge, the beneficiary will be authorized to irrevocably assign the policy or policy benefits to a funeral establishment and the assignment must not limit the ability of the pre-need funeral contract beneficiary from selecting a different funeral establishment to provide merchandise and services.

1023

07/01/2008

Sunset – TN life and health insurance guaranty association (SB 2538/HB 3580) – Sunsets the Tennessee life and health insurance guaranty association on June 30, 2012.

0616

03/11/2008

Minimum amount of property damage liability insurance (SB 2657/HB 2549) – Increases the minimum amount of property damage liability insurance for motor vehicle policies from \$10,000 to \$15,000 for proof of insurance coverage required after December 31, 2008.

1009

01/01/2009

Rulemaking Authority Effective 05/22/2008

The Tennessee Medical Malpractice Reporting Act of 2009 (SB 3137/HB 2650) – For claims closed or open and pending on or after January 1, 2008, all insuring entities or self-insurers that provide medical malpractice insurance to any facility or provider in the state are required to report each medical malpractice claim to the Commissioner of Commerce and Insurance. This act clarifies reporting requirements for self-insurers and claims with excess policies. Further, it specifies what information must be reported and requires the format and coding protocol of the reports to be consistent with format and protocol of data provided to the National Practitioner Data Bank. Allows the commissioner to assess a civil penalty of \$100 per day upon any insuring entity, self-insurer, facility, provider and claimant's counsel that fails to file a complete filing by the required date or fails to comply with other parts of this act.

1055

05/28/2008

Guaranteed Asset Protection Waiver Act of 2008 (SB3851/HB3671) – Creates a framework within which guaranteed asset protection waivers (GAP waivers) may be

offered in Tennessee. GAP waivers must disclose in writing that the cost of the GAP waiver is not regulated and that the consumer has the responsibility to determine whether the cost of the GAP waiver is reasonable in relation to the protection offered by the GAP waiver.

1093

07/01/2008

County governments and Cover Tennessee (SB 4076/HB 4025) – Defines “health benefits coverage” and “involuntary loss of coverage” within the Cover Tennessee Act of 2006 and opens participation of the program to county governments if they meet certain requirements.

0831

01/01/2009

Rulemaking Authority Effective 04/30/2008

TN Charitable Gift Annuity Act of 2008 (SB 4180/HB 4158) – Rewrites charitable gift annuity statutes including a requirement for charitable organizations to maintain one or more separate accounts for its charitable gift annuities, a new reporting standard, and procedures for proper investments and accounting standards.

1192

07/01/2008

Rulemaking Authority Effective 06/19/2008

Section 2 of Bill Effective 01/01/2009

TN Insurance Producer Licensing Act (SB 4203/HB 4203) – Revises exemptions to the continuing education requirements for producers to exempt “an insurance producer who has been continuously licensed since 1994” and to remove the exemption for “an insurance producer who is over the age of 65 on July 1, 2008. Revises provisions governing compensation for referrals and clarifies criminal sanctions for unlicensed activity.

1079

01/01/2009

Rulemaking Authority Effective 05/28/2008

TN Unfair Trade Practices and Unfair Claims Settlement Act of 2009 (SB4208/HB4207) – Makes numerous revisions to Title 56, Chapters 7 and 8, relative to unfair trade practices and the settlement of claims in the business of insurance.

0935

07/01/2008

Group insurance premiums (SB 1796/HB 1482) – Requires that premium payments be made on or before the beginning of each month’s coverage and that payment of the full month’s group premium be paid instead of payments being made in three-month increments.

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A • R • T • I • C • L • E • S

Workers' Compensation News

Commissioner Leslie Newman, on May 14, 2008, approved NCCI's 3.1% filing to reduce overall loss costs on new and renewal business effective July 1, 2008. This "Law-Only" filing stemmed from changes to the reimbursements under the Tennessee physician fee schedule effective March 4, 2008 and to other changes in the medical cost containment rules. Since September 1, 2004, the first adjustment in loss costs resulting from the 2004 Legislative reforms, overall loss costs in Tennessee have decreased 14%.

Loss costs represent the loss and loss adjustment expense portion of what is charged by insurance companies for workers' compensation coverage. Other expenses incurred by individual carriers to issue and service policies, profit, contingencies, and loss cost deviations must be factored in as well in determining the final rates that policyholders are charged.

Don't Be Scammed Into Being a Scammer!

The Problem:

Scammers are looking for you. Licensed Insurance Producers are being recruited to sell unregistered securities despite the fact that they may not be registered [licensed] to sell securities. Even if you are registered as both an insurance producer and a broker-dealer, the security itself in most cases must also be registered.

How Are Licensed Insurance Producers Being Recruited?

By the placement of ads in insurance trade publications and by word-of-

mouth, promising high commissions on sales and "rollovers", and making false claims of "guarantees" backed by offshore/phony "insurers".

Why Are You Being Recruited?

You have a ready-made list of clients who trust your advice on financial matters.

What Are The Most Common Scams Marketed to Insurance Producers?

Promissory notes; private placement memorandums (PPMs); investment contracts involving: internet kiosks, ATM machines, prime bank notes, foreign exchange [forex] transactions, and oil and gas leases.

It is the Insurance Producer's Responsibility to:

- determine if the product being offered is a security AND, if so, whether the product is required to be registered or is either (1) an exempt security or (2) a covered security (it is illegal for insurance producers to sell unregistered securities unless the security qualifies for an exemption or is a covered security) [Tenn. Code Ann. § 48-2-104]; and
- determine if a valid exemption exists for you if you are selling the product (it is illegal to sell any security without being properly registered [licensed] unless you qualify for an exemption—and there is only one exemption and that exemption applies to an owner, manager or director of an issuer when no commission is paid) [Tenn. Code Ann. § 48-2-109(a)].

Price You Pay:

These investments are, more often than not, "Ponzi" schemes in which new investors' money is used to make

payments to earlier investors in order to maintain the appearance of a legitimate investment when, in fact, the enterprise is not intended to generate legitimate profits and will eventually collapse, leaving the promoters with most of the money and most of the investors empty-handed. The promoters of these schemes are committing fraud that will harm the investors [your clients] and if you sell for them you will be committing fraud as well.

1. You could lose your insurance producer license [Tenn. Code Ann. § 56-6-112(a)(8)]
2. Civil liability to the investors may result [Tenn. Code Ann. § 48-2-122]
3. Criminal sanctions (Class D felony) are possible if the actions are willful (willful, as used in the statute, basically means only that you intended to do the act that resulted in the violation of the law, not necessarily that you intentionally violated the law – i.e. ignorance of the law is not an excuse) [Tenn. Code Ann. § 48-2-123]

How To Prevent Being Used:

Look for red flags: high commissions, "Guarantees", promised high returns, complicated investment strategies, glossy brochures and other hype.

Contact the Tennessee Securities Division at 1-800-863-9117 (toll free); 615-741-2947 (local); or by email at Securities.1@state.tn.us to check out the offering and the promoter.

Contact the Tennessee Insurance Division at 1-800-342-4029 (toll free); 615-741-2218 (local); or by email at CIS.Complaints@state.tn.us to find out if the offering is covered by your insurance producer license. ■

Legislative Summary...cont.

0987 05/21/2008

Health insurer notification requirements revised (SB 3212/HB 3779) – Prohibits a health insurance carrier from requiring providers to notify the carrier of a hospital inpatient emergency admission within one business day of the admission if compliance with such requirement would result in notification by the provider on a weekend of federal holiday.

1036 01/01/2009
Rulemaking Authority Effective 05/28/2008

Health group cooperatives (SB 4014/HB 4066) – Authorizes the establishment of health group cooperatives formed for the purpose of obtaining insurance. Specifies the number of required employees, terms of commitments, and open enrollment term for health care cooperatives in addition to authorizing the Department of Commerce and Insurance to promulgate rules and regulations.

1058 07/01/2008
Rulemaking Authority Effective 05/28/2008

Long-term care insurance (SB 4207/HB 4206) – This bill

modernizes current regulation of long-term care insurance so that Tennessee may be able to participate in the federal Long-Term Care Partnership Program. It provides better protections in the areas of non-forfeiture benefits, incontestability periods and insurance producer continuing education.

0919 10/01/2008

Health care liability action (SB2001/HB 1993) – Provides procedures for the filing of medical malpractices claims. Details time lines and required contents of written notices, petitions, and certificates of good faith. Provides for sanctions for claims filed in bad faith.

0841 04/30/2008

Self-insurance—sponsoring associations (SB 2944*/HB3400) – Removes requirement that sponsoring associations, for purposes of qualifying as self-insurers, submit to Commissioner of Commerce and Insurance on at least annual basis confirmation that participants comply with requirements. ■

YOU CAN RENEW YOUR LICENSE ONLINE

If you have questions/changes concerning your agent license, please visit

www.state.tn.us/commerce and check out our Agent Licensing Resource page. This office is responsible for the licensing and regulation of insurance agents. Approximately 106,000 agents are licensed to do business in Tennessee.

FOR RECENT COMPANY RATE FILINGS INFORMATION GO TO:

www.state.tn.us/commerce/insurance/consumerRes.html

For recent bulletins released by the Insurance Division please visit:

<http://state.tn.us/commerce/insurance/bulletins.html>